

Handling Corporate Congressional Probes In The Trump Era

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We seem never too far away from a major corporate crisis or scandal. It could be the hacking of millions of customer accounts, the recall of thousands of pounds of spinach, or the discovery of millions of fake financial accounts. These crises often come with regulatory or even criminal scrutiny. And the crisis only compounds when a congressional committee (or two or three) announces its own investigation. Today, it may be Marriott, Mylan or Wells Fargo; tomorrow it could be you, your company or your firm. One thing is certain: With the new Democratic majority in the House, 2019 is sure to be a difficult year for dozens of corporations and executives.



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Each corporate crisis brings its own unique issues and circumstances. As Tolstoy might lament, “all unhappy corporations are unhappy in their own way.” Perhaps an internal investigation. Scrutiny from an auditor. Customer revolts. Competitor smear campaigns. The aforementioned regulatory and criminal review. Even a Twitter insult from our president. And then there is the issue that we discuss here: Scrutiny by means of a congressional investigation.



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There is a usual playbook for the response to a congressional investigation, one that’s not so different from the response to other aspects of the crisis:

- Assess the situation;
- Don’t say or do anything that is going to make it worse;
- Engage professional help;
- Play for time;
- Provide some context (for example, in an opening statement);
- Apologize as necessary;
- Trumpet several remedial measures; and
- Keep your head down.

Another approach, one championed by President Donald Trump and thus far used by him with much more success than many would have predicted, is to couple the more traditional approaches outlined above with relentless, and not the least bit subtle, attacks on those that deign to offer criticism and to the outlets giving voice to those critics. That approach seems to have worked for Trump because the more disruptive he has been, and even the more coarse, crass or insulting he has been, the more his base has seemed to rally to his side. The more he has derided his critics and the media, the more he has managed to diminish and sideline them.

Can corporations use the same tactics for crisis communications as the president — especially a potential crisis as sensitive as a congressional investigation requiring testimony

by the corporation's executives? Should an executive attack rather than be conciliatory? Should she express rage rather than project calm? Should she decry media coverage of the crisis as "fake news"? In short, should she follow a gloves-off, "pit bull" public relations approach?

For congressional investigations, the answer is probably no.

The stakes are too high: A company risks exponentially compounding its PR headaches (and thus eroding its customer base) by becoming the target of dozens of congressional committee members, each with a staff of trained communications personnel. Indeed, a company risks becoming the single entity of loathing, which seems to unite congressional members and staff from both parties. And, further, there is the specter of a contempt of Congress finding and referral for prosecution.

And, on top of all of those downsides, the congressional inquisitors hold too many of the cards. They can impose onerous demands for documents. They can depose rafts of company personnel. They can schedule, postpone and cancel hearings. They control the shape and agenda of those hearings: the other witnesses, the questions, the length and the material that will be leaked to the press.

But, notwithstanding all of that, Trump's approach nonetheless has changed the game enough to demand consideration of a whole new set of options for companies, their executives and their advisers. This is largely the result of the latest technology and communications platforms being readily available to attack traditional "Beltway" media and to find and ally with supporters. Critically, a company's or executive's reputation will depend on how these new tools, traditional and nontraditional tactics, and networking platforms are integrated in response to an investigation.

Facebook, for example, despite spending heavily and applying several Trump-like tactics, had mixed results when it tried, in the aftermath of the 2016 election, to fend off negative public opinion and shape its image before Congress. As reported in *The New York Times*: Fighting against a massive wave of distrust and calls for founder Mark Zuckerberg's resignation, Facebook pushed positive content about the company while simultaneously pushing negative content about its competitors. The tactic worked, and congressional investigators called Google and Twitter executives to testify alongside Facebook. And because Google never showed, the attention on it served as a distraction and deflection for Facebook and the company's reputational problems were partially mitigated.

There are other, more practical, lessons to be learned from the congressional heat applied to Facebook and Zuckerberg. Indeed, apparently largely as the result of Zuckerberg's performance in front of the House, the company's stock went up during the two days of his testimony. His success came as a bit of a surprise given the perception from his early press that he was insular and arrogant. During his testimony, however, Zuckerberg played to his audience and was mostly deferential and patient in his responses to senators' questions about the company's technology and privacy policies, even when those questions appeared ill-informed.

The Facebook hearing itself resulted, however, from the political fallout of Facebook's apparent strategy of nondisclosure and denial in the face of allegations regarding its

relationship with Cambridge Analytica. “The truth always comes out” and “the cover-up is what kills you” are two staples of crisis communications, so companies never want to appear deceitful and are almost always best served by being as transparent as possible at each stage of a crisis situation. That doesn’t mean the company needs to disclose everything at once — no reasonable person expects that — but it does mean the company needs to understand its audience, align its response with that audience’s interests, and, most importantly, not play dumb or deny facts the company knows to be true. Had Facebook more forthrightly admitted its failings, it might have avoided congressional scrutiny in the first place.

On this point of aligning a company’s message to its core audience, consider also Trump’s response to the leaked NBC tape containing his comments about grabbing women, or certain parts of them. He didn’t deny the comments. Instead, he characterized his comments in a manner palatable to his base (“locker-room talk”), and thereby sufficiently marginalized them, all while castigating those arguing otherwise (“fake news”).

Most companies and executives, however, do not have it as easy as Trump (or the resources of Facebook) when considering these new options. Trump is president and knows there are people and media that hate him and always will. He also knows that his base loves it when he hates his haters back.

By contrast, companies need buyers, and so their biggest concern is not to turn them off from buying. Still, like Trump, companies must consider whether they can create a scenario in their battle with their detractors (the media, investigators, etc.) whereby their supporters become their apologists.

When it comes to handling media, Trump’s clarion call that it’s “fake news” has diminished the power of the media’s pen. In this new Trump reality, if you aren’t able to build and stoke a “fan-like” constituency, you risk severe damage to your reputation and, in turn, the bottom line.

Should the subpoena and spotlight fall upon you, consider all your options, weigh the risks and rewards of a nontraditional approach, and proceed with care.

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